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APR 26 2005
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re	Case No. 05-20584-C-7
WILLIAM J. LONG,	DC No. PDM-1
Debtor.	

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION FOR RELIEF FROM AUTOMATIC STAY

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtor filed this voluntary chapter 7 petition on January 18, 2005. He scheduled real property commonly known as 14845 Lago Drive, Rancho Murietta, California ("the property") as an

asset of the estate. The property was scheduled as exempt in the amount of $75,000. The chapter 7 trustee filed a report finding that there was no property available for distribution from the estate over and above that exempted by debtor. The court notes that debtor received a discharge on April 21, 2005.

On February 8, 2005, Mortgage Electronic Registration Systems, Inc. ("movant") filed a motion, notice, and declaration requesting that this court vacate the automatic stay to permit movant to commence foreclosure proceedings against the property. Movant's motion request attorneys' fees and costs.

The motion and declaration establish that the debtor owes the movant approximately $208,563.23. An additional lien encumbers the property in the amount of $75,000. The value of the property is approximately $330,000. As such, debtor has equity in the property in excess of $46,436.77.

On March 8, 2005, the court continued the motion to March 29, 2005, and ordered movant to file a supplemental declaration regarding its request for attorneys' fees and costs. After the March 29 hearing, the court continued the motion to April 26, 2005. After the hearing held on April 26, the court concluded that it would resolve the relief from stay motion as submitted and further continue the hearing on movant's request for attorneys' fees and costs.

Conclusions of Law

The automatic stay of acts against the debtor in personam and of acts against property other than property of the estate continues until the earliest of the time when the bankruptcy

case is closed, dismissed, or an individual in a chapter 7 case is granted a discharge. 11 U.S.C. § 362(c). However, the automatic stay may be terminated earlier if debtor fails to adequately protect the secured party's interest, § 362(d)(1), and, with respect to a stay of an act against property, the debtor does not have equity in the property, § 362(d)(2)(A), and the property is not necessary to an effective reorganization. § 362(d)(2).

In this instance, debtor received a discharge on April 21, 2005. As such, the motion requesting relief from the automatic stay as against the debtors shall be denied as moot without prejudice. Moreover, the court observes that had the court resolved the motion at the first hearing on March 29, 2005, the motion as to the debtors would have been denied because debtor has equity in the property in excess of $46,436.77.

As to the chapter 7 trustee, the motion will be granted because the trustee filed a no asset report.

Additionally, the hearing on movant's request for attorneys' fees and costs is continued to June 7, 2005. Any party wishing to supplement the record may do so before May 31, 2005.

An appropriate order will issue.

Dated: April 26, 2005

UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

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Dated: 4.29.05

Deputy Clerk